

Message Text

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PAGE 01 LONDON 14153 01 OF 02 121806Z

46

ACTION EB-07

INFO OCT-01 EUR-12 ISO-00 CAB-02 CIAE-00 COME-00 DODE-00

DOT-00 INR-07 NSAE-00 FAA-00 L-03 H-02 SS-15 NSC-05

PRS-01 PA-01 USIA-06 /062 W

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P 121755Z SEP 75

FM AMEMBASSY LONDON

TO SECSTATE WASHDC PRIORITY 4695

LIMITED OFFICIAL USE SECTION 01 OF 02 LONDON 14153

E.O. 11652: N/A

TAGS: EAIR, UK

SUBJ: CIVAIR - PANAM COMMISSION PROBLEM

REF: STATE 216469

1. SUMMARY: DEPT. OF TRADE HAS REJECTED COMPROMISE PROPOSAL CONTAINED IN DRAFT PANAM LETTER. EMBASSY AGREES WITH DEPARTMENT'S SUGGESTION THAT WE PUT VIEWS IN WRITING TO UK BUT RECOMMENDS IT TAKE FORM OF DIPLOMATIC NOTE WHICH WOULD INCLUDE FORMAL OFFER TO SUBMIT ISSUE TO ARBITRATION. EMBASSY ALSO RECOMMENDS THAT ASST. SECRETARY ENDERS RAISE ISSUE WITH FCO MINISTER OF STATE ENNALS WHEN LATTER CALLS ON ENDERS IN WASHINGTON. END SUMMARY.
 2. PANAM HAS NOW RECEIVED FROM DEPARTMENT OF TRADE (BROWN) A WRITTEN REPLY TO PANAM'S DRAFT RESPONSE TO DOT LETTER OF AUGUST 11 ORDERING AIRLINE TO COMPLY IN UK AND THIRD COUNTRIES WITH COMMISSION RATES PRESCRIBED BY SECSTATE FOR TRADE. DOT HAS TOLD PANAM THAT ITS DRAFT DOES NOT DEAL SATISFACTORILY WITH ASSURANCES THAT DOT HAS ASKED FOR. ALTHOUGH DOT LETTER DOES NOT SO STATE, DIFFICULTY WITH PANAM'S DRAFT IS ITS SUGGESTION THAT ALL AIRLINES BE BROUGHT INTO LINE SIMULTANEOUSLY ON COMMISSIONS PAID IN UK AND PANAM'S FAILURE TO PROVIDE ASSURANCE WITH REGARD TO COMMISSIONS PAID OUTSIDE UK
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PAGE 02 LONDON 14153 01 OF 02 121806Z

TERRITORY. COPY OF DOT LETTER HAS BEEN SENT DEPARTMENT.

3. PANAM INFORMS US THAT THEY NOW INTEND REPLY TO AUGUST 11 DOT LETTER GIVING ASSURANCES THAT CARRIER WILL COMPLY WITH COMMISSION RATE DIRECTIVE ON ALL TICKET SALES IN UK TERRITORY BUT SAYING NOTHING WITH REGARD TO SALES OUTSIDE UK. PANAM HOPES THAT POSITIVE SOUNDING REPLY MIGHT SATISFY DOT AND LATTER MIGHT NOT PRESS EXTRA-TERRITORIAL ASPECTS OF THE PROBLEM. GIVEN THE HISTORY OF THIS CONTROVERSY, WE ARE NOT SANGUINE THAT PANAM TACTIC WILL WORK BUT WE FAIL TO SEE WHAT OTHER COURSE OF ACTION MIGHT BE FEASIBLE SHORT OF CAVING IN COMPLETELY TO BRITISH IN A WAY WHICH COMPROMISES U.S. INTERPRETATION OF BILATERAL AGREEMENT.

4. IN OUR VIEW, PANAM POSITION IS UNTENABLE SINCE IT IS CAUGHT BETWEEN CONFLICTING POSITIONS OF THE TWO GOVERNMENTS. UKG, FOR ITS PART, IS ALSO IN AN AWKWARD POSITION HAVING ORDERED CARRIER TO PROVIDE SPECIFIC ASSURANCES, IT CANNOT VERY WELL SETTLE FOR LESS WITHOUT LOSING FACE EVEN THOUGH THERE IS GROWING RECOGNITION OF THE FACT THAT AS A GOVERNMENT IT LACKS THE MACHINERY (AND AUTHORITY) REQUIRED FOR EFFECTIVE ENFORCEMENT OF COMMISSIONS PAID OUTSIDE UK.

5. IN THESE CIRCUMSTANCES, WE FULLY ENDORSE DEPARTMENT'S SUGGESTION THAT USG AGAIN PUT ITS VIEWS ON PROBLEM FORMALLY AND IN WRITING TO UKG. WE RATHER DOUBT, HOWEVER THAT LETTER TO ROGERS WOULD HAVE MUCH EFFECT. WE HAVE ALREADY DISCUSSED ISSUE WITH ROGERS AT LENGTH BOTH IN WASHINGTON AND HERE AND HE MUST THEREFORE FULLY UNDER-

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PAGE 01 LONDON 14153 02 OF 02 121804Z

46

ACTION EB-07

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P 121755Z SEP 75
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LIMITED OFFICIAL USE SECTION 02 OF 02 LONDON 14153

STAND U.S. VIEWS ON THIS SUBJECT. NEVERTHELESS, HE HAS
THUS FAR SHOWN NO INCLINATION TO BACK DOWN FROM OR EVEN
COMPROMISE ON POSITION HE HAS TAKEN AND WE DOUBT THAT HE
WILL UNLESS FORCED TO DO SO BY PRESSURES FROM OTHER
PARTS OF UKG. WE WOULD RECOMMEND, THEREFORE, THAT U.S.
WRITTEN SUBMISSION AGAIN TAKE FORM OF DIPLOMATIC NOTE TO
BE DELIVERED TO FCO. GENERAL THRUST OF PROPOSED TEXT
CONTAINED PARA 2 REFTEL APPEARS TO BE ABOUT RIGHT FOR
OUR REPRESENTATIONS ALTHOUGH, OF COURSE, IT WOULD HAVE
TO BE MODIFIED IN CERTAIN RESPECTS TO BE SUITABLE FOR
SUBMISSION AS A NOTE. /WE WOULD LEAVE LANGUAGE FOR SUCH
A NOTE LARGELY TO DISCRETION OF DEPARTMENT BUT WOULD
CERTAINLY RECOMMEND IT (A) PROTEST DISCRIMINATION
AGAINST PANAM AND (B) REAFFIRM UNACCEPTABILITY OF EXTRA-
TERRITORIAL APPLICATION OF UK AUTHORITY AND WARN, AS
FIRST NOTE DID, THAT UNILATERAL ACTION AGAINST U.S.
CARRIER COULD HAVE SERIOUS CONSEQUENCES.

6. WE ALSO STRONGLY RECOMMEND THAT NOTE INCLUDE A FORMAL
OFFER TO SUBMIT QUESTION OF WHETHER COMMISSIONS ARE
COVERED BY AIR SERVICES AGREEMENT TO ARBITRATION PROVIDED
NO ACTION IS TAKEN AGAINST PANAM WHILE ARBITRATION IS
UNDERWAY. PURPOSE OF ARBITRATION OFFER, OF COURSE, IS
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PAGE 02 LONDON 14153 02 OF 02 121804Z

TO TRY TO DEFUSE THE ISSUE AND, HOPEFULLY, TO AFFORD THE
UKG A FACE-SAVING WAY OUT OF A POSSIBLE CONFRONTATION.
WE DO NOT KNOW WHETHER UK WOULD ACCEPT SUCH AN OFFER
BUT IT SEEMS TO US TO BE WORTH A TRY AND WOULD, IN ANY
EVENT, DEMONSTRATE THAT U.S. ACTING IN GOOD FAITH TO
TRY TO RESOLVE A CONTENTIOUS PROBLEM.

7. WE UNDERSTAND THAT DAVID ENNALS, MINISTER OF STATE,
FCO, WILL BE CALLING ON ASSISTANT SECRETARY ENDERS
DURING HIS VISIT TO WASHINGTON ON SEPTEMBER 17.

ENNALS WAS FCO OFFICIAL WHOM MINECONCOM
CALLED UPON MAY 15 TO DELIVER FIRST NOTE OF PROTEST ON
COMMISSION ISSUE AND THEREFORE HE IS FAMILIAR WITH THE
PROBLEM. WE WOULD RECOMMEND, THEREFORE, THAT ASST.
SECRETARY ENDERS RAISE THE MATTER WITH HIM WITH A VIEW
TO TRYING TO FIND SOME WAY TO DEFUSE THE SITUATION.

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